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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 SECURITIES AND EXCHANGE
18 COMMISSION,

19 Plaintiff,

20 v.

21 ROBERT YANG, et al.,

22 Defendants,

23 YANROB'S MEDICAL, INC., et al.,

24 Relief Defendants.

Case No. 5:15-CV-02387-SVW (KKx)

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION OF RECEIVER, STEPHEN J.
DONELL, FOR ORDER: (1)
APPROVING FINAL REPORT AND
ACCOUNTING; (2) AUTHORIZING
PAYMENT OF FINAL FEE
APPLICATION OF RECEIVER AND
PROFESSIONALS; (3) AUTHORIZING
SUBMISSION OF APPROPRIATE TAX
RETURNS; (4) AUTHORIZING
RETURN, ABANDONMENT, OR
DESTRUCTION OF DOCUMENTS,
AFTER RESOLUTION OF APPEAL;
(5) AUTHORIZING SUPPLEMENTAL
DISTRIBUTION; AND (6) CLOSING
RECEIVERSHIP CASE AND
DISCHARGING AND RELEASING
RECEIVER

[Notice of Motion and Motion;
Declaration of Stephen J. Donell; Final
Report and Accounting; Final
Applications for Payment of Fees and
Reimbursement of Expenses; and
[Proposed] Order thereon submitted
concurrently herewith]

Date: December 16, 2019
Time: 1:30 pm
Ctm: 10A
Judge Hon. Stephen V. Wilson

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Stephen J. Donell (the "Receiver") was appointed as the permanent receiver for Defendants Suncor Fontana, LLC, Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective subsidiaries and affiliates (collectively, the "Receivership Entities" or "Entities") pursuant to this Court's December 11, 2015 Preliminary Injunction, Order Appointing Receiver, Freezing Assets, and Providing for Other Ancillary Relief (the "Appointment Order"). In accordance with the Appointment Order, and the Court's subsequent Orders regarding the administration of the instant receivership, the Receiver's most significant responsibilities during the pendency of the receivership included:

(1) Marshaling and preserving all receivership assets ("Receivership Assets" or "Assets"). Ultimately, the Receiver recovered and collected a total of more than \$10.1 million for the administration of the Receivership Entities and the benefit of their investors and creditors, as reflected in his concurrently filed Final Report and Accounting;

(2) Disposing of Assets, including via the sale or abandonment of the Entities' real property Assets, negotiating settlements with Entity creditors, and recovering Assets (mostly funds derived from investors) improperly paid over to or deposited with third parties, including banks, municipal agencies, and Entity affiliates;

(3) Completing detailed Forensic Accounting Reports regarding the financial activities and condition of the Receivership Entities;

(4) Eliminating Receivership Entity liabilities, including via the abandonment of Assets worth less than the debt they secured and settling with Entity creditors;

(5) Proposing and securing Court approval for a claims process and plan for distribution of Receivership Assets to investors and other creditors;

1 (6) Making distributions to creditors of the Receivership Entities with
2 allowed claims in excess of \$7.7 million, inclusive of distributions to investors and
3 secured creditors; and

4 (7) Preparing and submitting periodic reports to the Court regarding the
5 status and results of the Receiver's administration of the estate of the Receivership
6 Entities (the "Estate").

7 As of the date of the instant Motion of Receiver for an Order: (1) Approving
8 Final Report and Accounting; (2) Authorizing Payment of Final Fee Application of
9 Receiver and Professionals; (3) Authorizing Submission of Appropriate Tax
10 Returns; (4) Authorizing Return, Abandonment, or Destruction of Documents, After
11 Resolution of Appeal; (5) Authorizing Supplemental Distribution; and (6) Closing
12 Receivership and Discharging and Releasing Receiver (the "Motion"), the Receiver
13 believes he has – with the assistance of his Professionals¹ – fulfilled each of his
14 responsibilities to the fullest extent possible, and that further efforts to administer
15 the receivership would not yield a net benefit to the Estate. The specific
16 accomplishments of the Receiver and his Professionals are summarized herein, and
17 in the Receiver's Final Report and Accounting ("Final Report"), submitted
18 concurrently with the instant Motion.

19 Having completed his Estate administration efforts, the Receiver has
20 determined, in his reasonable business judgment, that each of his responsibilities
21 under the appointment orders has been satisfied, and that the costs of continuing the
22 present receivership now outweigh any potential benefit. On that basis, the Receiver
23 believes that it is now appropriate to make a supplemental, *pro rata* distribution on
24 allowed claims in the aggregate amount of approximately \$30,000 to \$40,000, pay
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26

27
28 ¹ For the purposes of this Motion, the Receiver's "Professionals" are his attorneys,
Allen Matkins Leck Gamble Mallory & Natsis, LLP, his forensic accountants,
Brandlin and Associates, and his tax professionals, SL Biggs.

1 outstanding fees and expenses, wind-down and close the receivership case, and
2 discharge and release the Receiver.

3 Accordingly, the Receiver respectfully requests that this Court enter an Order:
4 (1) approving the Receiver's Final Report; (2) authorizing payment of the previously
5 approved amounts now presented in the Final Application for Payment of Fees and
6 Reimbursement of Expenses of Receiver and his Professionals, filed concurrently
7 herewith (the "Final Fee Application"); (3) authorizing the Receiver to submit any
8 necessary and appropriate tax returns for the Entities or the Estate; (4) authorizing
9 the Receiver to return, abandon, or destroy Receivership Entity records in
10 connection with his wind-up procedures, provided records are retained pending the
11 resolution of the Defendants' pending appeal; (5) authorizing the Receiver to make a
12 supplemental distribution, on a *pro rata* basis, on any previously allowed investor
13 claims, from any funds remaining on hand after the payment of outstanding fees and
14 expenses; and (6) authorizing the Receiver to complete any outstanding tasks
15 necessary to wind-down and close the receivership, and thereafter closing the
16 receivership and discharging and releasing the Receiver.

17 **II. RELEVANT FACTUAL BACKGROUND.**

18 A full recitation of the procedural history of the above-captioned action is
19 unnecessary for the purposes of this Motion, particularly given that the Receiver's
20 concurrently submitted Final Report summarizes the Receiver's actions during the
21 pendency of this matter. As to this Motion, the relevant facts are as follows:

22 The above-captioned enforcement action was commenced by the Plaintiff
23 Securities and Exchange Commission (the "Commission") on November 19, 2015.
24 (ECF No. 1.) The Commission's Complaint alleged that Defendants Yang and
25 Kano, through Defendant entities they controlled, committed a number of violations
26 of the federal securities laws, predicated upon false representations to foreign
27 investors participating the federal EB-5 immigration program. (*Id.*) The
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1 Commission requested the appointment of a receiver and, on December 11, 2015,
2 this Court entered the Appointment Order. (ECF No. 18.)

3 Since his appointment, the Receiver has administered the Estate and all
4 Receivership Assets in accordance with the Court's instructions, including
5 specifically: (1) marshaling and preserving Receivership Assets; (2) completing the
6 disposition of real property assets; (3) performing accountings and analysis of the
7 Receivership Entities' financial activities and condition; (4) eliminating and
8 addressing the Entities' liabilities; (5) recommending the claims process, appropriate
9 treatment of claims, and making distributions; and (6) preparing reports for this
10 Court. (See concurrently filed Declaration of Stephen J. Donell ["Donell Decl."]
11 ¶ 2.). The specific actions undertaken to date are identified in the Receiver's various
12 interim and quarterly reports, including the Final Report. By way of short summary,
13 the Receiver's most significant accomplishments include:

- 14 • Recovering more than \$10.1 million for the benefit of the Receivership
15 Entities;
- 16 • Completing a detailed document review and two forensic accounting
17 reports;
- 18 • Securing permission from the Court to market and sell real properties
19 owned by the Entities, and completing the sale of all saleable Assets,
20 and abandoning Assets worth less than the debt they secured;
- 21 • Establishing and securing Court approval of summary procedures for
22 administration of investor and creditor claims; and
- 23 • Securing approval from the Court of the Receiver's recommended
24 treatment of specific claims against the Receivership Entities and
25 approval for the Receiver to make a *pro rata* distribution on all claims
26 recommended for allowance, and making a distribution on allowed
27 claims in excess of \$7.7 million, including more than \$6.1 million
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distributed to investors and \$1.6 million paid to a secured creditor, pursuant to the Court's authorization.

The Receiver has concluded, in his reasonable business judgment, that continued administration of the receivership case will not result in recovery of additional Receivership Assets and will not increase the amount of Assets available to the Receivership Estate. (Donell Decl. ¶¶ 3-4.) Thus, the costs of continuing the receivership now outweigh the benefits. Id. Given this determination, and having fulfilled his responsibilities under the appointment orders, the Receiver believes it is now time to close the receivership case and discharge and release the Receiver. Id. at ¶ 5. To that end, the Receiver respectfully requests that this Court enter an Order approving the Receiver's Final Report; authorizing the payment of the Final Fee Application; authorizing the Receiver to submit appropriate tax returns; authorizing the Receiver to return, abandon or destroy Receivership Entity records; authorizing the Receiver to make a supplemental, *pro rata* distribution on allowed investor claims; and closing the receivership and discharging and releasing the Receiver upon the Receiver's completion of these tasks. Id. As is customary in these matters, the Receiver will submit a Notice or Declaration to the Court reflecting the completion of all closing tasks when completed. Id. at ¶ 6.

III. PROCEDURE FOR CLOSING RECEIVERSHIP AND DISCHARGING RECEIVER.

A. Receivership Wind-Down And Final Closing Tasks.

By this Motion, the Receiver respectfully requests Court approval and authorization of the final closing tasks detailed below in connection with closing the instant receivership and discharging the Receiver:

1. Approval of the Receiver's Final Report.

The Receiver's Final Report (which also appends his final accounting for the Estate) has been submitted to the Court concurrently with this Motion. (Donell Decl. ¶ 6; see also, Receiver's Final Report and Accounting, submitted concurrently

1 herewith.) The Final Report summarizes the actions of the Receiver and his
2 Professionals during the pendency of the receivership case, and provides
3 descriptions of his document review and analysis, accounting, Asset preservation
4 and recovery, claims administration and reporting efforts. Id. A copy of the
5 Receiver's final accounting summary, reflecting receipts and disbursements for the
6 receivership through August 31, 2019 is attached as **Exhibit 1** to the Final Report.
7 Id. The Receiver respectfully requests that the Court approve his Final Report.

8 2. Payment of Fees and Expenses of Receiver and his Professionals.

9 Concurrently with this Motion, the Receiver and his Professionals have
10 submitted their collective Final Fee Application, requesting payment of their
11 respective fees and expenses incurred from August 1, 2018 through January 31,
12 2019, along with the administrative fees and costs of the wind-down and termination
13 of the receivership. (See Final Fee Application filed concurrently herewith.)

14 The Court has already approved the fees and expenses identified in the Final
15 Fee Application, and by their application, the Receiver and his Professionals request
16 that the Court authorize their payment. Specifically, the Receiver's April 11, 2019
17 Motion for Order Approving Final Distribution Amount and Authorizing Final
18 Distribution (the "Final Distribution Motion") requested that the Court authorize the
19 Receiver to set aside a total of approximately \$329,000 from the funds currently on-
20 hand, to cover the payment of accrued and anticipated administrative and
21 professional fees and costs, including the so-called holdbacks of fees approved in
22 prior fee applications, just over \$42,000 in fees and expenses incurred from August
23 1, 2018 through January 31, 2019, and \$40,000 to cover aggregate, estimated fees
24 and expenses through the termination of the receivership. (See ECF No. 281-1.)
25 The Court granted the Final Distribution Motion on May 7, 2019, including the
26 proposed set-asides of funds for the payment of accrued and anticipated fees and
27 expenses. (See ECF No. 299.) While the Court has approved (or reaffirmed) these
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1 amounts, it has not authorized the Receiver to make payment, and the Receiver
2 requests such authorization at this time. (Donell Decl. ¶ 7; 8, 9, Ex. A.)

3 3. Submission of Appropriate Tax Returns.

4 The Receiver is required to submit appropriate tax returns for each calendar
5 year of the pendency of the receivership. (Donell Decl. ¶ 10.) Accordingly, the
6 Receiver anticipates submitting necessary and appropriate tax returns
7 contemporaneously with the closure of the receivership case, and requests Court
8 authorization to do so. Id.

9 4. Return, Abandonment, or Destruction of Records, After
10 Resolution of Appeal.

11 The Receiver is in possession of significant quantities of documents obtained
12 during his administration of the Estate, either at the outset of the receivership or
13 recovered from third parties during his investigation into the financial affairs of the
14 Receivership Entities, some of which are maintained in paper form. (Donell
15 Decl. ¶ 11.) Some of these documents contain private financial information of the
16 Receivership Entities' investors. Id.

17 As this Court is aware, Defendants Yang and Kano, along with certain Relief
18 Defendants, have appealed the Court's Final Judgement in this matter. (See ECF
19 No. 268.) Ordinarily, the Receiver would petition for authority to return to the
20 individual defendants in this matter any hard copy documents originally turned over
21 by them (should they request such turnover), to abandon any documents containing
22 non-private information, and to destroy any other documents containing private
23 investor information, commencing no fewer than approximately forty-five (45) days
24 after the termination of the receivership. However, given the pendency of the
25 appeal styled SEC v. Yang, 9th Cir. Case No. 19-55289, the Receiver proposes
26 instead to return or make available to the parties copies or originals of any
27 documents originally turned over by the Defendants, and to hold digital copies of all
28 records obtained during the pendency of his appointment until such time as an order

1 resolving the appeal is entered, after which the Receiver will abandon any materials
2 containing non-private documents, and destroy any materials containing non-public
3 information. Id.

4 5. Completing the Supplemental Distribution, if Funds Permit.

5 As reflected in the Receiver's Final Report, his efforts to recover funds for the
6 administration and benefit of the Receivership Entities were sufficiently successful
7 that, even after completing a then-anticipated \$3.1 million final distribution on
8 allowed claims (in an amount that exceeded the Court-approved base amount of
9 approximately \$2.9 million by more than \$200,000) and after the payment of
10 outstanding administrative and professional fees and expenses, and any outstanding
11 ordinary operations costs, the Receiver expects to have a surplus remaining on-hand,
12 in the approximate amount of \$30,000 to \$40,000. (Donell Decl. ¶ 12.) The
13 Receiver recommends that, as part of the wind-down and termination of the instant
14 receivership, the Court authorize him to make a supplemental, *pro rata* distribution
15 on allowed claims from these funds.

16 6. Completing Outstanding Closing Tasks for the Receivership and
17 Discharging and Releasing Receiver.

18 The Receiver respectfully requests that, once he has completed the above-
19 identified closing tasks, this Court thereafter close the present receivership case and
20 discharge and release the Receiver, effective immediately upon the Receiver's
21 submission of a Notice or Declaration to the Court regarding his completion of these
22 final closing tasks, including his recommended supplemental distribution on allowed
23 claims. (Donell Decl. ¶ 13.)

24 **IV. ARGUMENT.**

25 **A. The Proposed Final Closing Tasks Should Be Authorized And The**
26 **Receiver Discharged And Released.**

27 A court's power to administer an equity receivership is extremely broad. SEC
28 v. Hardy, 803 F.2d 1034, 1037 (9th Cir. 1986); SEC v. Forex Asset Mgmt., LLC,

1 242 F.3d 325, 331 (5th Cir. 2001); SEC v. Basic Energy & Affiliated Resources,
2 273 F.3d 657, 668 (6th Cir. 2001); SEC v. Elliot, 953 F.2d 1560, 1566 (11th Cir.
3 1992); SEC v. Wang, 944 F.2d 80, 85 (2d Cir. 1991). In the absence of controlling
4 authority, and where applicable, district courts supervising equity receiverships
5 routinely look to bankruptcy law for guidance. SEC v. Am. Capital Invs., 98 F.3d
6 1133,1140 (9th Cir. 1996); CFTC v. Topworth Int'l, 205 F.3d 1107, 1116 (9th Cir.
7 1999) (Central District local rules, for instance, "direct receivers, unless otherwise
8 ordered ... to 'administer the estate as nearly as possible in accordance with ... the
9 administration of estates in bankruptcy.'"); Fleet Nat'l Bank v. H&D Entm't, 926
10 F.Supp. 226, 240 n. 56 (D. Mass. 1996) ("[W]hat is permitted under the Bankruptcy
11 Code, generally is, a fortiori, permissible under receivership law.").

12 In the case administration context, courts are deferential to the business
13 judgment of bankruptcy trustees, receivers, and similar estate custodians. See, e.g.,
14 Bennett v. Williams, 892 F.2d 822, 824 (9th Cir. 1989) ("[W]e are deferential to the
15 business management decisions of a bankruptcy trustee."); Southwestern Media,
16 Inc. v. Rau, 708 F.2d 419, 425 (9th Cir. 1983) ("The decision concerning the form
17 of ... [estate administration] ... rested with the business judgment of the trustee.");
18 see also SEC v. Health Maintenance Ctrs., Inc., 2002 WL 34388014 (W.D. Wash.
19 2002) (Equating bankruptcy trustees with receivers and finding that "the courts have
20 overwhelmingly applied a 'business judgment' test" to estate administration.); In re
21 Thinking Machines Corp., 182 B.R. 365, 368 (D. Mass. 1995) ("The application of
22 the business judgment rule ... and the high degree of deference usually afforded
23 purely economic decisions of trustees, makes court refusal unlikely.") (rev'd on
24 other grounds, 67 F.3d 1021 (1st Cir. 1995)).

25 As reported herein and in the concurrently submitted Final Report, the
26 Receiver has made all reasonable and necessary efforts to recover, review, and
27 analyze Receivership Entity business records and documents, to assemble forensic
28 accounting reports reflecting the Receivership Entities' financial activities, to

1 recover available Receivership Assets, and to develop and administer an equitable
2 claims and distribution process for victimized investors and creditors, including
3 making distributions on allowed and secured claims in an amount exceeding
4 \$7.7 million. The Receiver has concluded, in his reasonable business judgment, that
5 continued administration of the instant receivership will not result in recovery of any
6 significant additional Receivership Assets and will not increase the amount of
7 Assets available to the Receivership Estate. Accordingly, the Receiver has
8 concluded that it is now appropriate to close the receivership, and discharge and
9 release the Receiver.

10 **B. The Final Fee Application Is Reasonable And Appropriate, And**
11 **Payment Of All Outstanding Fees and Expenses Should Be**
12 **Authorized At This Time.**

13 As noted above, the Court granted the Final Distribution Motion on May 7,
14 2019. (See ECF No. 299.) In its Order, the Court specifically authorized the
15 Receiver, prior to completing his final distribution on allowed claims, to set aside
16 funds from cash on-hand sufficient to cover: (1) \$246,432.70 in holdbacks of fees
17 of the Receiver and his professionals already previously approved by the Court, but
18 as yet unpaid; (2) \$42,626.62 in administrative and professional fees and expenses
19 incurred during the period from August 1, 2018 through January 31, 2019; and
20 (3) an additional \$40,000.00 in aggregate administrative and professional fees and
21 expenses expected to be incurred through the termination of the instant receivership.
22 (Id.) In other words, the Court has already approved the above-identified fees and
23 expenses, and it should authorize the Receiver to make all associated payments at
24 this time.

25 "As a general rule, the expenses and fees of a receivership are a charge upon
26 the property administered." Gaskill v. Gordon, 27 F.3d 248, 251 (7th Cir. 1994).
27 These expenses include the fees and expenses of the Receiver and his Professionals.
28 Decisions regarding the timing and amount of an award of fees and expenses to the

1 Receiver and his Professionals are committed to the sound discretion of the Court.
2 SEC v. Elliot, 953 F.2d 1560, 1577 (11th Cir. 1992) (rev'd in part on other grounds,
3 998 F.2d 922 (11th Cir. 1993)).

4 1. The Fees and Expenses Requested in the Final Fee Application
5 are Reasonable.

6 In determining the reasonableness of fees and expenses requested in this
7 context, the Court should consider the time records presented, the quality of the
8 work performed, the complexity of the problems faced, and the benefit of the
9 services rendered to the receivership estate. SEC v. Fifth Avenue Coach Lines, Inc.,
10 364 F.Supp. 1220, 1222 (S.D.N.Y. 1973).

11 Here, the Final Fee Application describes the nature of the services that have
12 been and will be rendered, and where appropriate, the identity and billing rate of the
13 individuals performing each task. The Receiver and his Professionals have
14 endeavored to staff matters as efficiently as possible in light of the level of
15 experience required and the complexity of the issues presented. In general, the Final
16 Fee Application reflects the Receiver's and his Professionals' customary billing rates
17 and the rates charged for comparable services in other matters, less any discounts or
18 reductions specifically identified in the application. The weighted-average billing
19 rates of the Receiver and his Professionals are as noted in the Final Fee Application.

20 The Receiver has reviewed the Final Fee Application, and believes the hourly
21 rates charged were appropriate, given the requirements of the instant receivership,
22 that every effort was made to have tasks completed at the lowest possible billing
23 rate, and that the total fees for which the Receiver seeks authorization for payment
24 are fair and reasonable. (Donell Decl. ¶ 8.) The Receiver likewise believes that the
25 estate of the Receivership Entities has benefited from the services identified. (Id.)

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2. The Fees and Expenses Incurred in the Receivership are
Consistent with Ninth Circuit Requirements.

Courts in the Ninth Circuit use either the "percentage of fund" calculus or apply the "lodestar" method to determine whether a fiduciary fee request is appropriate. See, e.g., Powers v. Eichen, 229 F.3d 1249, 1256 (9th Cir. 2000); In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig., 109 F.3d 602, 609 (9th Cir. 1997). The "percentage of fund" determines an appropriate fee as a percentage of funds recovered. Powers, 229 F.3d at 1256. In evaluating the propriety of a fee request with reference to the total funds recovered, the Ninth Circuit has established a benchmark of 25% as presumptively reasonable. See, e.g., Powers, 229 F.3d at 1256-57; see also Petroleum Prods., 109 F.3d at 607 (25% determined to be an appropriate benchmark in common fund matters).

An application of the "lodestar" method requires multiplying the number of hours reasonably required for the services performed by the movant's reasonable hourly fee to arrive at the so-called lodestar amount. See, e.g., Blum v. Stenson, 465 U.S. 886, 888 (1984). Once the lodestar amount is calculated, a court can then adjust fees up or down depending on context and relevant factors, including the expertise of counsel, complexities of litigation and risks involved, the relation of fees to total recovery (essentially, a "percentage of fund" correction), and other factors. In re San Vicente Medical Partners, Ltd., 962 F.2d 1402, 1410 (9th Cir. 1992).

Here, as reflected in the Receiver's Final Report, the Receiver's total recoveries for the benefit of the Estate and its investors and creditors has exceeded \$10 million, including the \$1.6 million remitted to Celtic Bank in satisfaction of its claim). (See ECF. No. 237 at 6:4-7.) As of the date of the Final Fee Application, and **including** the fees and expenses submitted for payment authorization by the Court, the Court has approved a total of approximately \$1.5 million in administrative fees and expenses in this matter, **inclusive** of all holdbacks and the

1 fees and expenses identified in its Order on the Final Distribution Motion, for which
2 fees have been paid to the Receiver and his professionals, on an interim basis, at
3 80% or 90%, respectively, with the remaining holdbacks payable only at the end of
4 the receivership and upon Court approval. (See ECF Nos. 145, 146, 163, 187, 221.)
5 In other words, assuming the Court were to authorize the Receiver to make payment
6 of the administrative and professional fees and expenses addressed in the Order on
7 the Final Distribution Motion, total payments would be less than **16%** of all funds
8 recovered for the benefit and administration of the Estate, inclusive of the
9 \$1.6 million remitted to Celtic Bank in satisfaction of its claim as part of the
10 Receiver's total recovery.²

11 In other words, the total fees and expenses incurred by the Receiver and his
12 professionals in this matter fall ***well below*** the 25% benchmark established by the
13 Ninth Circuit as presumptively reasonable. An application of the lodestar method to
14 the fees and cost incurred to date likewise supports the Final Fee Application,
15 particularly given the complexity of the business and financial activities of the
16 Entities, the lack of documentation initially available to the Receiver and the
17 resultant investigation he was required to undertake, resulting in a detailed forensic
18 accounting, and the Receiver's remarkable success in minimizing Entity liabilities
19 and maximizing the value of the Entities' Properties, including, in one instance, via a
20 sale, for \$900,000, of a property purchased with \$500,000 in funds diverted from
21 investors. The inclusion of a percentage of funds "check" on the lodestar amount
22 only serves to underscore the propriety of the fees and expenses incurred. The
23 Receiver therefore respectfully requests that the Court grant the Final Fee
24 Application and approve the fees and expenses requested therein.

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² Indeed, even including ordinary operations costs incurred by the Receiver, total fees, expenses, and operations costs in this matter would still fall well below the 25% threshold for presumptive reasonableness.

3. The Fees and Expenses Requested in the Final Fee Application
have been Submitted to the Commission, Without Objection.

Courts often consider the judgment and experience of the Commission relating to receiver compensation. "[I]t is proper to [keep] in mind that the [Commission] is about the only wholly disinterested party in [this] proceeding and that ... its experience has made it thoroughly familiar with the general attitude of the Courts and the amounts of allowances made in scores of comparable proceedings." In re Philadelphia & Reading Coal & Iron Co., 61 F. Supp. 120, 124 (D.C. Pa. 1945). Indeed, the Commission's perspectives are not "mere casual conjectures, but are recommendations based on closer study than a district judge could ordinarily give to such matters." Finn v. Childs Co., 181 F.2d 431, 438 (2d Cir. 1950) (internal quotation marks omitted). In fact, "recommendations as to fees of the [Commission] may be the only solution to the 'very undesirable subjectivity with variations according to the particular judge under particular circumstances' which has made the fixing of fees seem often to be 'upon nothing more than an ipse dixit basis.'" Id. Thus, the Commission's perspective on the matter should certainly be given "great weight," as observed by the court in Fifth Avenue Coach Lines, Inc., 364 F. Supp. at 1222.

In order to ensure that the fees and expenses requested in the Final Fee Application are appropriate, the Receiver and his Professionals have submitted their respective invoices to the Commission for review. The Commission has not objected. The Commission's satisfaction with the subject invoices therefore merits significant deference. As the Philadelphia & Reading Coal & Iron Co. court observed, the Commission is "thoroughly familiar with ... the amounts of allowances made in scores of comparable proceedings." 61 F.Supp. at 124. Indeed, the Commission is likely in the best position to measure the fees and expenses requested here against those incurred in other, similar proceedings, and cases of similar complexity. The Receiver and his Professionals thus respectfully request

1 that the Court approve all requested fees and expenses reflected in the Final Fee
2 Application.

3 4. The Receiver Should be Authorized to Pay Allowed Fees and
4 Expenses from Cash on Hand.

5 The bulk of the funds the Receiver holds are those previously set aside per
6 Court Order to cover the fees and expenses incurred by the Receiver and his
7 Professionals, and approved by the Court, but not paid. By their collective Final Fee
8 Application, the Receiver and his Professionals respectfully request that the Court
9 exercise its broad discretion and enter an order permitting the payment of fees and
10 expenses requested from these funds.³ Specifically, the Receiver requests that this
11 Court authorize the payment of previously approved holdbacks in the aggregate
12 amount of \$246,432.70, aggregate fees and expenses for the period from August 1,
13 2018 through January 31, 2019, and aggregate reserves in the amount of \$40,000.00,
14 for a total of 329,059.32.

15 **V. CONCLUSION.**

16 Based on the Receiver's cumulative findings and the fulfillment of his duties
17 under the Appointment Order, the Receiver respectfully requests that this Court
18 enter an Order:

- 19 1. Approving the Final Report and Accounting;
20 2. Authorizing the payment of the fees and expenses requested in the
21 Final Fee Application;
22 3. Authorizing the Receiver, by and through his tax accountant, to submit
23 final tax returns for the Receivership Entities;

24
25
26 ³ As reflected above, the Receiver proposes to use any available funds remaining
27 after the payment of professional and administrative fees and expenses to make a
28 supplemental, *pro rata* distribution on allowed claims. Any funds remaining
thereafter would be remitted to the Commission, and credited to the United
States Treasury.

1 4. Authorizing the Receiver to return or make available certain
2 Receivership Entity documents during the pendency of the SEC v. Yang, et al.
3 appeal, and upon its resolution, to abandon or destroy Receivership Entity
4 documents retained by the Receiver;

5 5. Funds permitting, authorizing the Receiver to make a supplemental, *pro*
6 *rata* distribution on allowed investor claims, as detailed herein; and

7 6. Authorizing and instructing the Receiver to complete the outstanding
8 wind-down and closing tasks identified herein, and thereafter closing the instant
9 receivership case and discharging and releasing the Receiver, without further order
10 of the Court, effective upon receipt of a Notice or Declaration from the Receiver
11 reflecting the completion of the foregoing tasks.

12
13 Dated: November 13, 2019

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO
NORMAN M. ASPIS

14
15
16 By: /s/ Joshua A. del Castillo

JOSHUA A. DEL CASTILLO
Attorneys for Receiver
STEPHEN J. DONELL

PROOF OF SERVICE

Securities and Exchange Commission v. Robert Yang, Suncor Fontana, et al.
USDC, Central District of California – Case No. 5:15-cv-02387-SVW (KKx)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 865 S. Figueroa Street, Suite 2800, Los Angeles, California 90017-2543.

A true and correct copy of the foregoing document(s) described below will be served in the manner indicated below:

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION OF RECEIVER, STEPHEN J. DONELL, FOR ORDER:**

**(1) APPROVING FINAL REPORT AND ACCOUNTING;
(2) AUTHORIZING PAYMENT OF FINAL FEE APPLICATIONS OF
RECEIVER AND PROFESSIONALS; (3) AUTHORIZING SUBMISSION
OF APPROPRIATE TAX RETURNS; (4) AUTHORIZING RETURN,
ABANDONMENT, OR DESTRUCTION OF DOCUMENTS AFTER
RESOLUTION OF APPEAL; (5) AUTHORIZING SUPPLEMENTAL
DISTRIBUTION; AND (6) CLOSING RECEIVERSHIP CASE AND
DISCHARGING RECEIVER**

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC
FILING ("NEF")** – the above-described document will be served by the Court via NEF. On **November 14, 2019**, I reviewed the CM/ECF Mailing Info For A Case for this case and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- **Zachary T. Carlyle**
carlylez@sec.gov,kasperg@sec.gov,karpeli@sec.gov,
blomgrene@sec.gov,NesvigN@sec.gov
- **Eric David Dean**
edean@fyklaw.com,cyoung@fyklaw.com
- **Stephen J. Donell**
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- 13 • **Melissa Katherine Zonne**
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15 2. **SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each**
16 **person or entity served)**: On **November 14, 2019**, I served the following person(s)
17 and/or entity(ies) in this case by placing a true and correct copy thereof in a sealed
18 envelope(s) addressed as indicated below. I am readily familiar with this firm's
19 practice of collection and processing correspondence for mailing. Under that practice
20 it is deposited with the U.S. postal service on that same day in the ordinary course of
21 business. I am aware that on motion for party served, service is presumed invalid if
22 postal cancellation date or postage meter date is more than 1 (one) day after date of
23 deposit for mailing in affidavit. Or, I deposited in a box or other facility regularly
24 maintained by FedEx, or delivered to a courier or driver authorized by said express
25 service carrier to receive documents, a true copy of the foregoing document(s) in
26 sealed envelopes or packages designated by the express service carrier, addressed as
27 indicated above on the above-mentioned date, with fees for overnight delivery paid
28 or provided for.

Franchise Tax Board (FTB)
P.O. Box 2952
Sacramento, CA 95812-2952

Via U.S. Mail

Internal Revenue Service
880 Front Street
San Diego, CA 92101-8869

Via U.S. Mail

1 I declare that I am employed in the office of a member of the Bar of this Court at
2 whose direction the service was made. I declare under penalty of perjury under the laws of
3 the United States of America that the foregoing is true and correct. Executed on
November 14, 2019 at Los Angeles, California.

4
5 /s/ Martha Diaz

Martha Diaz